

THE RUTHERFORD INSTITUTE

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October 3, 2014

City Council
The Hon. Bob Henry, Mayor
City of Nampa, Idaho
411 3rd St. S.
Nampa, ID 83651

Re: Military surplus equipment

Dear Council Members and Mayor Henry:

The Rutherford Institute has been contacted by a group of Nampa citizens concerning your police department's military-grade equipment, specifically a Mine-Resistant Ambush Protected (MRAP) vehicle, acquired as a result of grants provided by the Department of Homeland Security (DHS).

As an attorney and civil liberties advocate¹ who has long advised communities on the delicate balance required by the Fourth Amendment, I firmly believe that the discussion about whether community police officers need rifles or night vision scopes or an armored vehicle is one that needs to engage the entire community and must be decided by local residents and their elected representatives, and not be decided unilaterally by the federal government, the military, or local law enforcement. I would go so far as to say that *whenever* this kind of armament is brought into a community, it should only be done with the knowledge and consent of the community.

Military recycling program carries hidden costs of repair and maintenance

Local police agencies in all 50 states and four U.S. territories participate in the Pentagon's 1033 "recycling" program, and the share of equipment and weaponry gifted

¹ Constitutional attorney John W. Whitehead is president of The Rutherford Institute, a nonprofit organization that provides legal representation without charge to individuals whose civil liberties are threatened or infringed and educates the public about constitutional and human rights issues.

each year continues to expand. Since 1990, \$4.2 billion worth of military weapons and equipment has been transferred from the Defense Department to domestic police agencies through the 1033 program, in addition to various other programs purportedly aimed at fighting the government's War on Drugs and War on Terror.

The MRAP is an intimidating part of this "recycling" program. Weighing in at 20 tons, an MRAP is built to withstand everything from small arms fire to improvised explosive device blasts, attributes that are wholly unnecessary for any form of domestic policing. Furthermore, while supposedly acquired for little up front, these \$733,000 battering rams come with hidden costs that can add up to tens of thousands of dollars yearly in maintenance and repair.

The use of military equipment in local policing heightens the risk and endangers the community

While local police departments often argue that MRAPs and other militaristic equipment are essential to a fully functioning police force, the reality is that violent crime nationwide is at a 40-year low. Most of this equipment is not only largely unnecessary but is completely incongruous with the security needs of smaller communities. As Paul Craig Roberts, former Assistant Secretary of the Treasury and associate editor of *The Wall Street Journal* pointed out, "17,000 local police forces are equipped with such military equipment as Blackhawk helicopters, machine guns, grenade launchers, battering rams, explosives, chemical sprays, body armor, night vision, rappelling gear and armored vehicles. Some have tanks."

Whether or not the use of such sophisticated and overblown militarized equipment is justified, many local police units still feel compelled to put it to use. The widespread misuse of military equipment by law enforcement is a growing and well-documented problem that has resulted in the deaths of innocent people, nonviolent offenders, and police officers. A perfect example of this is the tendency on the part of many communities to employ heavily armed SWAT teams to carry out routine police procedures such as the service of search warrants. Consequently, SWAT team raids, which once numbered a few thousand per year in the 1980s, now occur over 80,000 times per year.

While we all want our law enforcement officers to be able to do their job, which is to maintain the peace and uphold the Constitution, and we want them to be safe and protected while doing so, we must keep in mind that the fatality rate of on-duty patrol officers is reportedly far lower than many other professions, including construction, logging, fishing, truck driving, and even trash collection. In fact, police officers have the same rate of workplace fatalities as taxi drivers. Add to this the fact that nationally, police

officers killed in the line of duty are now at a 50-year low. And in the past 80 years, not a single Nampa Police Officer has fallen in the line of duty.

Military equipment transforms local police into extensions of the military

While proponents of the government's military recycling program tend to downplay the impact of military-grade equipment on law enforcement, there can be no denying that using equipment better suited to a battlefield alters how law enforcement is perceived as well as how they carry out their duties as peace officers. An investigative report by Andrew Becker and G.W. Schulz reveals that local law enforcement agencies in communities large and small across America are arming themselves to the teeth with weapons previously only seen on the battlefield. "Many police, including beat cops, now routinely carry assault rifles. Combined with body armor and other apparel, many officers look more and more like combat troops serving in Iraq and Afghanistan."

Appearances to the contrary, the American police force is not supposed to be a branch of the military, nor is it a private security force for the reigning political faction. It is an aggregation of the countless local civilian units that exist for a sole purpose: to serve and protect the citizens of each and every American community.

What can you do to restore the balance?

When the Department of Homeland Security launched its 1033 surplus military equipment recycling program, it laid the groundwork for a transformation of local law enforcement into extensions of the military, upsetting a critical balance established by our Founding Fathers who warned against establishing a standing army that would see American citizens as potential combatants.

It now falls to local governing bodies such as your own to restore the rightful balance between the citizenry and those appointed to safeguard their freedoms. For the sake of greater transparency, accountability, and oversight when it comes to police acquisition and deployment of military-grade equipment, we are recommending a policy of direct oversight by local elected officials. This ensures that if local law enforcement acquires such weapons, they do so with the blessing of the people of that community.

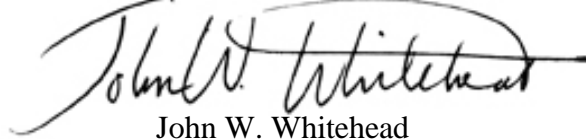
In this way, if a majority of citizens disagree, their objections can be addressed by representatives who are politically accountable—or citizens can vote them out of office in favor of more suitable representatives. That is simply the way a representative democracy is supposed to function.

If there is anything I or The Rutherford Institute can do to assist you in this process, please do not hesitate to call upon us. As Samuel Adams said, it takes only a tireless few

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“keen on setting brushfires of freedom in the minds of men” to bring about a better world. I urge you to show your commitment to democracy and make history.

Yours in freedom,

A handwritten signature in black ink that reads "John W. Whitehead". The signature is written in a cursive style with a large, sweeping flourish that extends from the end of the name back over the top of the letters.

John W. Whitehead
President